

Serial No.: 10/632,061
Examiner: Chris E. Simmons
Group Art Unit: 1612

REMARKS

STATUS OF THE CLAIMS

Claims 1-9, 11-20 and 22-27 are presently pending. Claims 10 and 21 were previously cancelled. Thus, Claims 1-9, 11-20 and 22-27 are currently under examination.

WITHDRAWAL REJECTION UNDER 35 U.S.C. §102(a)

Applicant acknowledges with thanks withdrawal of the rejection of Claims 1-7, 9-20 and 22-26 on the basis of Pinchuk et al. (U.S. Application Publication No. 2002/0107330 A1) (“PINCHUK”)

REJECTION UNDER 35 U.S.C. §103(a)

The Examiner maintains the previous rejection of Claims 1-7, 9-20 and 22-26 under 35 U.S.C. §103(a) as being unpatentable over Pinchuk et al., U.S. Application Publication. No. 2002/0107330 (“PINCHUK”) in view of Schwarz (U.S. Application Publication. No. 2003/0236514) (“SCHWARZ”).

Claim 8 is rejected under 35 U.S.C. §103(a) as being unpatentable over PINCHUK in combination with SCHWARZ taken in view of Van Dijk et al. (PCT Application Publication. No. WO 2000/061203) (“VAN DIJK”).

Claim 27 is rejected under 35 U.S.C. §103(a) as being unpatentable over PINCHUK in combination with SCHWARZ taken in view of Ding et al. (U.S. Pat. No. 5,837,313) (“DING”), with DING being cited merely for the concept of sterilization.

Each of these rejections is respectfully traversed.

Moreover, with regard to SCHWARZ, the following is noted. The present U.S. Application Serial No. 10/632,061 was filed July 31, 2003, whereas U.S. Publication No. US 2003/0236514 (SCHWARZ) did not publish until December 25, 2003. It is further noted that the assignee of SCHWARZ and the assignee of the present application are one and the same so that 35 U.S.C. §103(c) is applicable. 35 U.S.C. §103(c) reads as follows:

“Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the

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invention was made, owned by the same person or subject to an obligation of assignment to the same person."

Statement concerning common ownership

In compliance with M.P.E.P. 706.02(I)(2), it is submitted that the present U.S. Application Serial No. 10/632,061 and U.S. Publication No. US 2003/0236514 to SCHWARZ were, at the time the claimed invention of U.S. Application Serial No. 10/632,061 was made, both owned by the same person or subject to an obligation of assignment to the same person.

Consequently, the subject matter of SCHWARZ does not preclude patentability under 35 U.S.C. 103(a).

Reconsideration and withdrawal of all outstanding rejections under 35 U.S.C. 103(a) are requested, because each of these rejections relies on SCHWARZ and the subject matter of SCHWARZ does not preclude patentability under 35 U.S.C. 103(a).

CONCLUSION

Applicants submit that Claims 1-9, 11-20 and 22-27 are in condition for allowance, early notification of which is earnestly solicited. It is believed that this Response is being submitted in time for an Advisory Action should the Examiner require further changes to the Claims. Should the Examiner be of the view that an interview would expedite consideration of this Response or of the application at large, the Examiner is requested to telephone the Applicant's attorney at the number listed below in order to resolve any outstanding issues in this case.

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